

# FAIR HOUSING LITIGATION SEMINAR FOR FHAP AND FHIP COUNSEL

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# Advising the Government Client

- Securing written authorization to act.
- Authorization to proceed, sue, negotiate and achieve compliance with the Act.
- This gives official status and protection to your actions as counsel.

# Specific Authorization Items

- Who will proceed to do what and how?
- What is it that will be done?
- Who is it who is “authorizing action?”
- Who will have responsibility and to whom will responsibility be delegated?
- What will compliance look like and who will decide?
- What is the term of the authorization?

# Ethical Obligations To The Parties

- Bad facts and inadequate investigation make bad law which hurts others.
- Rule No. 1: DO NO HARM!
- Can you sign off on this case?
- Can you put your professional reputation on the line?

# Adhering to Rule 11 or Its Local Equivalent

- Requires a diligent thorough investigation of the facts.
- Requires a claim well grounded in the law.
- Can you make a prima facie case?

# Before You File – Preparing for Battle - Part I

- Decide on your strategy: How will you secure the unit for the victim?
- Decide on what relief you will request.
  - Damages? Injunctive relief? Penalties?
  - Protection of the public interest – license revocation or suspension?
  - Will you need to preserve the status quo ante?
- Decide on your theory of the case.

# Potential Theories of the Case

- Disparate Treatment.
- Adverse Impact.
- Discriminatory Effects.
- Mixed Motive.
- Other theories.

# Theories of Proof

- The *Burdine* prima facie case:
  - Member of protected class.
  - Qualified applicant.
  - Rejected or otherwise mistreated.
  - After rejection property remained available.
- Burden shifts to defendant to articulate a legitimate non discriminatory reason.
- Burden shifts to plaintiff to show pretext.



# Theories of Proof

- Adverse Impact.
  - Facially neutral policy which disproportionately excludes members of a protected class or falls more heavily on such class.
  - E.g. 4 persons in a 3 bedroom rule.
- Mixed motive cases.

# Think About What The Theories of Defense Might Be

- Exempt property or person.
- Timeliness.
- First Amendment.
- No protected class.
- No knowledge, control or responsibility.
- Rogue employee.
- After acquired evidence.

# Temporary Injunctive Relief

- Designed to preserve the status quo and keep the unit available or preserve jurisdiction. E.g. Rule 65.
- Requires a showing of :
  - Urgency.
  - Likelihood of success on the merits.
  - Likelihood of irreparable injury if denied.
- Generally not appealable since not final.

# Preliminary Injunctive Relief

- Is a decision on the merits and is generally appealable.
- Requires a showing of :
  - Probability of success at trial.
  - Irreparable injury.
  - Balancing of the harms.
- Consolidating the hearing on the preliminary injunction with the trial on the merits.

# Making Your Record

- The government is not your ordinary litigant; it does not need bonds.
- It does need an adequate record to support court action.
- You must establish injury to the victim, the locality, the state, or the United States with hard evidence.
- Through affidavits, testimony as to availability: the postman, neighbors.

# Use of the Consent Decree

- When used properly this is a powerful weapon available to government prosecutors to establish injury and solidify a determination on the merits.
- E.g. *Murphy v. Monona Shores*.